

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE SUNIL THOMAS

MONDAY, THE 8TH DAY OF JUNE 2015/18TH JYAISHTA, 1937

FAO.No. 75 of 2004 ()

AGAINST THE ORDER IN I.A.1425/2003 IN OS 405/2002 of PRINCIPAL SUB
COURT,KOLLAM DATED 30-06-2003

APPELLANT/PETITIONER/PLAINTIFF:

SHANKARANKUTTY NAIR,
SREE NILAYAM, THRIKOVILVATTOM, MUHATHALA
REPRESENTED BY POWER OF ATTORNEY HOLDER
RAVEENDRAN PILLAI, KALLUVILA VEEDU, KURUMANNU CHERY
MUHATHALA, KOLLAM.

BY ADV. SRI.P.SIVARAJ

RESPONDENT/COUNTER PETITIONER/DEFENDANT:

UMA DEVI AMMA,
KAILETHUMALA HOUSE, CUTCHERRY PADIKKAL
C/O. AMBALATHINGAL.

THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR ADMISSION
ON 08-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

ANNEXURE A1 : CERTIFIED COPY OF I.A.NO.1425/03 IN
O.S.405/2002 BEFORE the SUB COURT, KOLLAM

ANNEXURE A2 : CERTIFIED COPY OF OBJECTION FILED IN
I.A.NO.1425/03 IN O.S.405/2002 BEFORE the SUB COURT, KOLLAM

RESPONDENT'S EXHIBITS:NIL

True Copy

P A to Judge

“CR”

**THOTTATHIL B. RADHAKRISHNAN &
SUNIL THOMAS, JJ.**

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F.A.O.No.75 of 2004

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Dated this the 08th day of June, 2015

JUDGMENT

Thottathil B. Radhakrishnan, J.

Service complete. Heard.

2. This appeal is against an order by which the court below refused to grant leave to the appellant to sue as an indigent in so far as the balance court fee payable in a suit instituted by him against the respondent is concerned.

3. While the appellant attributed his subsequent indigency to the fact that he lost his job in a Gulf country and has returned to India and is without any earnings, the fact of the matter remains that the court below did not address any of those issues. It rested rather on technicalities to hold that the application could not have been treated as an interlocutory one.

4. When 1/10th court fee due at the stage of institution of the suit was paid and the plaintiff thereafter faced a situation where

he claimed exemption from payment of balance court fee, it is sufficient that the plaintiff files an interlocutory application. Though relevant rules require a verified petition to be filed; even in cases where a verified petition is a prescription in terms of the rules, if a litigant files an affidavit supporting such an interlocutory application; that would be in a pending suit and is hence maintainable, as being in substantial compliance of the rules, if the ingredients necessary for claiming such relief are stated in the affidavit filed in support of that petition. It would be too hyper technical to reject such a petition on a ground referable to the form in which such an application is filed. Substantial justice has to find its way forward, though without infracting procedural laws. This is more so because procedural webs are created to insulate the system from injustice. On the totality of the facts and circumstances of the case in hand, we see that this is a case where the court below ought to have proceeded to consider the merit of the contention of the appellant that he did not have the means to pay the balance court fee of Rs.34,650/- due on the plaint.

5. For the aforesaid reasons, the impugned order is set aside and the matter is remitted to the court below for further

consideration of I.A.No.1425 of 2003 in the light of what is stated above.

The appeal is allowed accordingly.

Sd/-
THOTTATHIL B. RADHAKRISHNAN
Judge

Sd/-

SUNIL THOMAS
Judge

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